

Ser. No. 09/744,514  
Response to Office Action of 27 May 2003  
Atty Docket 117040-18

## REMARKS

### Specification

The Examiner has objected to the specification at Page 3, lines 22-24 for reference to the claims. As this specification is filed as a PCT national stage entry, it is a literal translation of the specification filed in Europe, where the language objected to is considered proper. Proper amendment to paragraph [0010] is made above.

### Drawings

The Examiner has objected to the drawings for failing to include reference number 15.2 in the description. This is due to a correctable typographical error in the translation. In reviewing the original German text, which is filed in the case, it is noted that Page 11, second full paragraph thereof corresponds to paragraph [0037] of the substitute specification as translated. Line 3 of the German paragraph shows the reference numeral "15.2" instead of "15.1," which appears in translation. While the undersigned attorney does not profess fluent knowledge of German, the relevant text at line 3 translates roughly as "the operative surface 15.2 defining the cavity 3, at the distal end of the second portion 1.2." Contrast this to line 5 of paragraph [0038] of the substitute specification that discusses operative surface 15.1, which is at the proximal end of the first portion 1.1. To summarize, surface 15.1 is on part 1.1, while surface 15.2 is found on part 1.2.

This comports with what is clearly shown in Figure 3.

For this reason, the objection is resolved above by amendment to paragraph [0037] without introducing new matter.

### Information Disclosure Statement

The applicant acknowledges the Examiner's review of the references cited in the Information Disclosure Statement filed with the case.

### Certified Copy of Priority Documents

The Examiner's acknowledgment of the certified copy of the priority documents is noted by the applicant.

### Claims and amendments

Claims 1-23 were pending at the time of the Office Action, with claims 6-11, 15-19, and 21-22 determined by the Examiner to be allowable if in independent form.

Ser. No. 09/744,514  
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Claim 18 is amended to remove extraneous material that should have been removed in the preliminary amendment filed with the case. This amendment does not narrow the claim or introduce new matter.

#### Section 102 rejections

Claims 1-5, 12-14 and 23 are rejected as being anticipated by Biedermann, US Pat. No. 6,168,597 ("Biedermann '597"). Applicant respectfully traverses the rejection.

Of the claims, claim 1 is an independent claim, so if it is not anticipated, then none of the claims dependent upon it (which includes claims 2-22) can be anticipated either. As worded, claim 1 requires that the "fixing body is adapted to be spread open substantially over its entire length." In fact, this is described in the claim as the characterizing feature. Identifying the "fixing body" as element 2 in Biederman '597, the Examiner states that Figure 3 shows that the fixing body has spread open substantially over its entire length. This is simply not correct. First, there is no teaching in Biederman '597 that any portion of the fixing body 2 beyond (to the left of) sawtooth-shaped portion 9 actually spreads open. In fact, if such spreading were to occur, then the edge 25 of the expanding member 21 would not be able to lock into the teeth of portion 9, as is taught at Col. 2, lines 57-59. Clearly, head 3 is not capable of "spreading open."

Further, claim 1 as worded requires that the fixing body can be spread "open transversely with respect to its longitudinal direction by a wedge action at least in the region of its two ends." Although Biederman '597 shows a fixing body 2 that can be spread open at its first end (reference numeral 7 in Figure 1), the second end 3 is not spread open.

Please note that for either of these events to occur as the Examiner posits, the shaft 21 would have to be larger than the longitudinal bore 5 in Biederman '597, in order to cause the spreading. However, note that Col. 2, lines 12-14 says "the diameter of the shaft 21 is sized so that the shaft is guided within the longitudinal bore 5 of the bone screw, but is displaceable therein in axial direction." To be axially displaceable, the shaft 21 must be slightly smaller than bore 5, so the shaft 21 cannot spread the fixing body open.

Independent claim 23 is allowable for the same reasons as claim 1, provided above.

Ser. No. 09/744,514  
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**Allowable subject matter**

Although the Examiner has indicated that claims 6-11, 15-19, 21 and 22 would be allowable if in independent form, applicant respectfully declines to put any of these claims into such independent form, since all are considered allowable as proper dependent claims.

Respectfully submitted,



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